

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

No. CV 12-0927 MCA/LAM
CR 03-0231 MCA

FITZ ERROL HENRY, a/k/a
JACOB BRUNNER, a/k/a
DAVID A. MARTIN,

Defendant/Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Magistrate Judge Lourdes A. Martínez' *Proposed Findings and Recommended Disposition* (Doc. 12), filed on February 7, 2013. Objections to the PF&RD were due February 25, 2013. A staff note entered on the Court's docket states that on March 5, 2013, Defendant/Movant called the clerk's office and stated that he sent his "response" to the PF&RD to Denver, and that he would be mailing the response that day "with the envelope noting the Denver address as an exhibit." On March 26, 2013, a letter dated March 18, 2013, from Defendant/Movant to the clerk of the Court, was entered on the Court's docket. [Doc. 13]. The letter states that the information attached to the letter should have been sent to this Court, and that Defendant/Movant would "like time to properly address the issues of [his] appeal." *Id.* at 1. Attached to the letter are copies of an envelope from the Tenth Circuit Court of Appeals to Defendant/Movant and documents filed in Defendant/Movant's Louisiana state case. *Id.* at 2-4. The letter was docketed by the clerk of the Court as a "Motion for Extension of Time to File," and the Magistrate Judge entered an order denying the motion to the extent Defendant/Movant was asking for an extension of time to file objections to the PF&RD. To the extent Defendant/Movant intends the letter to be objections to the PF&RD, the Court

finds that they are without merit and should be overruled because they are untimely, and because Defendant/Movant fails to state with any particularity his objections to the PF&RD. *See United States v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996) (“[W]e hold that a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.”). Therefore, the Court has determined that it will: overrule Defendant/Movant’s objections to the PF&RD; adopt the ***Proposed Findings and Recommended Disposition*** (Doc. 12); deny Mr. Henry’s Section 2255 Motion or writ of *coram nobis* [Doc. 1], motion for production of documents [Doc. 4] and motions to compel [Docs. 7 and 10]; and dismiss this case with prejudice.

IT IS THEREFORE ORDERED that any objections contained in Document 13 are **OVERRULED**.

IT IS FURTHER ORDERED that the ***Proposed Findings and Recommended Disposition*** (Doc. 21) are **ADOPTED** by the Court.

IT IS FURTHER ORDERED that Mr. Henry’s Section 2255 Motion or writ of *coram nobis* [Doc. 1] is **DENIED**.

IT IS FURTHER ORDERED that Mr. Henry’s motion for production of documents [Doc. 4] and motions to compel [Docs. 7 and 10] are **DENIED without prejudice**.

IT IS FURTHER ORDERED that this case be **DISMISSED WITH PREJUDICE** and that a final judgment be entered concurrently with this order.

IT IS SO ORDERED.



HONORABLE M. CHRISTINA ARMijo
CHIEF UNITED STATES DISTRICT JUDGE